HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.315 of 2007

Between:

M/s. Hard Granite Industries, Chittoor,
represented by its Proprietor,
Kattamanchi, Chittoor District.

…Appellant

And

The Government of Andhra Pradesh,
represented by its Principal Secretary to Government,
Environment, Forest, Science and Technology
(For-I) Department, Hyderabad and others.

…Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri D. Vijayachandra Reddy

Counsel for respondent Nos.1 to 4 : Government Pleader for Forests

April 19, 2007

Per G.S. Singhvi, C.J.

Whether the decision of the State Government to entertain the application made by respondent No.5 – M/s. Jayasri Granites under the Forest (Conservation) Rules, 2003 (for short, 'the 2003 Rules') in preference to similar application made by the appellant for permission to use forest land for non-forest purpose is the question, which arises for determination in this appeal filed against order dated 22-3-2006 vide which the learned Single Judge dismissed the writ petition filed by the appellant.

The Facts:

By an order dated 4-2-1997, Director of Mines and Geology, Andhra Pradesh (hereinafter referred to as 'the Director'), granted lease to the appellant for quarrying black granite over an area measuring 2 hectares comprised in Survey No.220 of Kottalam Village, Yadamarri Mandal, Chittoor District. After sometime, the officers of the Forest Department objected to the quarry operations undertaken by the appellant on the ground that the area was a reserved forest and the same cannot be used for non-forest purpose without obtaining prior approval of the Central Government as required by Section 2 of the Forest (Conservation) Act, 1980 (for short, 'the 1980 Act'). The appellant challenged the same in Writ Petition No.9876 of 1998, which was disposed of by the learned Single Judge vide his order dated

10-4-1998 in the following terms:

> "The petitioner shall now file an application to the State Government seeking permission for mining operations in the area leased within a period of three weeks from the date of receipt of a copy of this order. The State Government shall forward the said application to the Central Government with appropriate recommendations, within a period of three weeks thereafter. The Central Government on receipt of the petitioner's application along with the report/ recommendations of the State Government shall consider and dispose of the same keeping in view the peculiar circumstances of the case and pass appropriate orders within a period of six weeks from the date of receipt of the application and recommendations from the State Government.
>
> However, till the disposal of the matter by the Central Government, the petitioner shall not conduct any mining operations whatsoever. However, it shall be open for the petitioner to lift the mineral already extracted and shift or transport the same outside the forest area.
>
> The forest officials shall not cause any obstruction to the petitioner in shifting the already extracted mineral. It is also open for the petitioner to transport the machinery and other vehicles employed in conducting mining operations, if the said vehicle and machinery is still stationed in the land earlier

granted on lease to the petitioner. If the said machinery is under seizure, the same shall be released to the petitioner."

In furtherance of the direction given by the learned Single Judge, the appellant made an application for grant of permission to use the forest land for non-forest purpose. During the pendency of the application, the Director vide his order dated 19-3-2000 cancelled the lease of the appellant on the premise that clearance of the Government of India had not been obtained. Revision filed by the appellant under Rule 34-A of the Andhra Pradesh Minor Mineral Concession Rules, 1966 was dismissed by the State Government vide order dated 16-8-2001. Writ Petition No.14169 of 2002 filed by the appellant was dismissed by the learned Single Judge. The same was the fate of Writ Appeal No.1489 of 2002.

In the meanwhile, Divisional Forest Officer, Chittoor (respondent No.4) vide his proceedings dated 15-11-2000 closed the file relating to application dated 2-5-1998 made by the appellant for obtaining clearance under the 1980 Act.

The appellant neither challenged the judgment of the Division Bench in Writ Appeal No.1489 of 2002 by filing petition for Special Leave before the Supreme Court nor it questioned the legality of proceedings dated 15-11-2000 issued by respondent No.4. However, after the framing of 2003 Rules, it filed an application dated 10-12-2003 for grant of clearance under the 1980 Act. The Conservator of Forests, Anantapur Circle, Anantapur (respondent No.3) recommended the appellant's case to the Principal Chief Conservator of Forests (respondent No.2). A similar application was made by respondent No.5 on 1-7-2002 in respect of the area for which lease had been granted to the appellant in 1997. Respondent No.2 considered both the applications and declined the one made by the appellant on the ground that the lease granted to it had been cancelled and that the

order of cancellation has become final. This was communicated to the appellant vide letter dated 6-11-2004, the relevant portions of which are extracted below:

> "You are informed that the Government vide reference cited observed that, by the time when M/s.Jayasree Granites has filed its application on 1-7-2004 the lease permission of M/s.Hard Granite Industries was cancelled by the Mines and Geology Department during 2000 and file was closed in the Office of the Divisional Forest Officer, Chittoor West and the Hon'ble High Court of Andhra Pradesh has also rejected the writ petition filed by you. The revision petition filed before the Government was also dismissed by the Government.
>
> It is further informed that, the mining lease was granted by the Director of Mines and Geology for 2 Ha. in Survey No.228 (gap area) of Kottalam village, Yadamarri Mandal, Chittoor District vide Director of Mines and Geology Proc. No.10802/RM/213/95, dt.4-2-1997 was by mistake presuming area is outside Reserve Forest. However, since the above said mining area is falling in the Reserve Forest and a case was booked against you and also the mining activity was stopped. Further confirmed that sanction of mining activity was under wrong notion. Aggrieved with the above orders you have approached Hon'ble High Court in Writ Petition No.9876/98 and the Hon'ble High Court in its judgment dt.10.4.1998 directed you to file an application to the State Government seeking permission for mining operations in the areas leased within a period of 3 weeks from the date of receipt of the orders. Accordingly, you have submitted proposals on 2.5.98 through Mines Department and the same were sent to the Divisional Forest Officer, Chittoor (West) on 4.5.1998 for taking further necessary action. However, in spite of ample opportunity given to you, you have not come forward and extended cooperation for processing the application. As such, the Divisional Forest Officer, Chittoor (West) while writing to the Assistant Director of Mines and Geology, Chittoor, has closed the file duly informing you also. The Director of Mines and Geology also cancelled lease application of your firm for which you have neither protested nor represented against the action of the Divisional Forest Officer. You have filed a revision before the Government against the cancellation of lease by Director of Mines and Geology, which was rejected. Against the rejection orders of

Government you have filed a writ petition in Writ Petition No.14169/2002 and W.A.No.1489/2002, which were ultimately dismissed. As such you have no claim for your application dt.2.5.1998.

In the meanwhile, M/s.Jayasree Granites has filed an application on 1.7.2002 to the Divisional Forest Officer, Chittoor (West) and the same is under process, new guidelines have come into force from 10.1.2003 prescribing revised format and the Divisional Forest Officer inadvertently returned the proposals of M/s.Jayasree Granites with a direction to apply before the Prl. Chief Conservator of Forests as per revised guidelines. Accordingly, M/s.Jayasree Granites has applied to the Principal Chief Conservator of Forests on 27.10.2003 in the revised format and got registered at Sl.No.42. However, as per the clarification given by the Government of India, the new format is applicable to those project proposals which have been submitted by the respective State Government/UT Governments on 10.1.2003 and thereafter Government of India, further clarified that the proposals in the pipeline before 10.1.2003 should be processed and will not loose seniority.

In view of the above and as the areas applied by you and M/s.Jayasree Granites is one and the same therefore you have no claim over the areas applied by M/s.Jayasree Granites. Moreover, application of M/s.Jayasree Granites is in the pipeline before 10.1.2003, though you have registered your application at Sl.No.31 before the Principal Chief Conservator of Forests. Hence, your application cannot be processed."

The appellant challenged the aforementioned communication as also Memo dated 25-10-2004 issued by the State Government for processing the application dated 1-7-2002 made by respondent No.5 in Writ Petition No.21489 of 2004. By an order dated 1-2-2006, the learned Single Judge set aside Memo dated 25-10-2004 and letter dated 6-11-2004 and directed the State Government to pass fresh order in accordance with law.

In compliance of the Court directions, the State Government re-considered the applications made by the appellant and respondent No.5 and passed order dated 4-5-2006 whereby it was declared that

the application of respondent No.5 deserves prior consideration.

The appellant questioned the indirect rejection of its application in Writ Petition No.11167 of 2006 and prayed for issue of a mandamus to the official respondents to consider its application in preference to the one made by respondent No.5 for grant of clearance under the 1980 Act. This time, the learned Single Judge negatived the appellant's claim by observing that it does not have subsisting mining lease. This is evinced from the following extracts of the order under challenge:

> "As noted above, the quarry licence granted in favour of the petitioner dated 4-2-1997 is no longer subsisting. Admittedly the application dated 2-5-1998 was made by the petitioner seeking clearance under Section 2 of the Forest (Conservation) Act, 1980 for the purpose of the said quarry lease dated 4-2-1997. Consequent to the cancellation of quarry lease, the file relating to the petitioner's application dated 2-5-1998 was also closed by the Divisional Forest Officer, Chittoor West Division vide proceedings dated 15-11-2000. Both the above said orders have become final.
>
> Nothing has been placed before this Court to show that the petitioner was subsequently granted any fresh quarry lease. However, he made a fresh application dated 12-10-2003 seeking clearance under the Forest (Conservation) Act, 1980 in the revised format prescribed under the new Rules. In the circumstances, the action of the respondents in declining to treat the said application dated 12-10-2003 as continuation of the application dated 2-5-1998 cannot be held to be arbitrary or erroneous. Once the mining lease is cancelled and does not subsist, the application, if any, pending under Section 2 of the Forest (Conservation) Act, 1980 would automatically be rendered superfluous. On the other hand, since the quarry lease in favour of the 5th respondent is subsisting, the 1st respondent had rightly concluded that the application dated 27-10-2003 is the continuation of its earlier application dated 1-7-2002 and therefore the said application alone should be processed.
>
> The observations made by this Court while disposing of W.P.No.21489 of 2004 cannot be taken as conclusive since this Court never recorded any finding on merits. As a matter of fact, one of the contentions raised before this Court in

W.P.No.21489 of 2004 was that the orders impugned therein were passed without notice to the petitioner. While accepting the said submission, this Court set aside the orders impugned and directed the 1st respondent to hear both the parties and pass appropriate orders afresh. Hence, the contention of the petitioner that the impugned order is bad being contrary to the observations made by this Court cannot be accepted."

Shri D. Vijayachandra Reddy made strenuous efforts to convince us that the reasons assigned by the State Government for not giving priority to the appellant's application are legally unsustainable and the learned Single Judge committed an error by refusing to entertain challenge to order dated 4-5-2006. He further argued that the decision of the State Government not to consider the appellant's application should be declared as violative of Article 14 because in most parts of the State, mining operations are being carried out without obtaining clearance/ approval as per the requirement of the 1980 Act read with the 2003 Rules.

We have considered the submissions of the learned counsel, but have not felt impressed. Undisputedly, the lease granted to the appellant in 1997 was cancelled by the Director vide his order dated 19-3-2000 and that order has become final because the appellant did not challenge the judgment of the Division Bench in Writ Appeal No.1489 of 2002. The file relating to application dated 2-5-1998 made by the appellant for grant of clearance under the 1980 Act was also closed by respondent No.4 vide proceedings dated 15-11-2000. Those proceedings have also become final because the appellant did not question the same by availing appropriate departmental or legal remedy. It is, thus, evident that as on the date of making fresh application i.e.

10-12-2003 for grant of clearance under the 1980 Act, the appellant did not have subsisting mining lease. Therefore, the application made by the appellant for grant of permission/clearance to use the forest land for non-forest purpose was redundant and no illegality can

be said to have been committed by the concerned authority by refusing to entertain the same. In our opinion, the concerned authority was not even required to process the application, what to say of entertaining and accepting the same because, in the absence of subsisting mining lease, the clearance granted by the competent authority would have been futile. The appellant cannot, without there being a subsisting lease in its favour, operate a mine only on the basis of clearance granted by the competent authority under the 2003 Rules read with Section 2 of the 1980 Act.

In view of the above conclusion, we do not consider it necessary to dilate on the issue whether the application made by the appellant was prior in point of time and the decision of the government to give preference to the application of respondent No.5 is legally unsustainable.

The argument of the learned counsel that the decision of the government is discriminatory and is liable to be quashed on the ground of violation of Article 14 of the Constitution of India appears attractive in the first blush, but totally lacks merit and is liable to be rejected. If mining operations are being carried out by anyone without obtaining clearance/approval as per the requirement of Section 2 of the 1980 Act read with the 2003 Rules, the same will have to be treated as illegal and such illegality cannot be made basis for issue of a direction to the official respondents to allow the appellant to undertake mining operations. It is settled law that Article 14 cannot be invoked for compelling a public authority to commit an illegality or pass an illegal order merely because in some other case, the said public authority has committed illegality or passed an illegal order. This proposition must be treated as settled by the decisions of the Supreme Court in **Chandigarh Administration v. Jagjit Singh**[1], **Secretary, Jaipur Development Authority v. Daulat Mal Jain**[2], **Gursharan Singh v. New Delhi Municipal Committee**[3],

Faridabad CT Scan Centre v. D.G. Health Services[4], **Style (Dress Land) v. Union Territory, Chandigarh**[5] and **State of Bihar v. Kameshwar Prasad Singh**[6].

The facts of **Jagjit Singh's** case (supra) were that the respondents who had given the highest bid for 338 square yards plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:

"We are of the opinion that the basis or the principle, if it

be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length.

Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken

in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

In **Secretary, Jaipur Development Authority v. Daulat Mal Jain** (supra), the Supreme Court held as under:

"The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts."

I n **Gursharan Singh v. New Delhi Municipal Committee** (supra), the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

> "Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law."

I n **Faridabad CT. Scan Centre v. D.G. Health Services** (supra), the three Judges Bench of the Supreme Court overruled the earlier decision of the two Judges Bench and held:

> "Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. "

In **State of Bihar v. Kameshwar Prasad Singh** (supra), the Supreme Court held as under:

> "The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown

to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits."

In the result, the appeal is dismissed. However, by taking cognizance of the statement made by the learned counsel for the appellant that in vast areas of Andhra Pradesh, mining operations are being carried out without obtaining permission/approval in terms of the Forest (Conservation) Act, 1980 read with Forest (Conservation) Rules, 2003, we direct Principal Chief Conservator of Forests, Andhra Pradesh to instruct officers subordinate to him to undertake survey of all the mining areas in the State and submit a report to this Court within two months clearly indicating therein the details of the mining activities in the forest areas without obtaining clearance/approval of the competent authority.

G.S. SINGHVI, C.J.

19th April, 2007

C.V. NAGARJUNA REDDY, J.

Note:
The Court Officer is directed to give attested copy of this judgment to the learned counsel for the parties.

(By order)

svs

---

[1] AIR 1995 SC 705

[2] (1997) 1 SCC 35

[3] (1996) 2 SCC 459

[4] (1997) 7 SCC 752

[5] (1999) 7 SCC 89

[6] (2000) 9 SCC 94